THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.17112 OF 2005

DATED: 11-08-2005

BETWEEN;

P.Satyanarayana Reddy S/o Santhaiah

..PETITIONER

VS.

The Superintendent Customs,(Preventive) Hyderabad-II,Hyderabad.

..RESPONDENT

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.17112 OF 2005

ORAL ORDER

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The grievance of the petitioner is that the respondent has impounded and is not returning his passport.

According to the petitioner he is an Indian citizen, presently working as a Sales person in a Supermarket in Saudi Arabia for over a decade and comes regularly to the country for holidays. According to him, he returned to India and for the return journey reserved tickets from the Rajiv Gandhi Airport, Begumpet,

Hyderabad. On 13-07-2005 while he was waiting in the bus stand at Metpally, one person came to him and introduced himself as Avinash and handed over a sweet box requesting that it be given to a friend by name Nizamuddin, the later being a friend of the petitioner at Saudi Arabia. When the petitioner entered the Airport on 13-07-2005 the petitioner contends, the respondent intercepted the petitioner and seized the sweet box and after check, a small quantity of "Ganja" was found in the box. The petitioner was arrested and Case No.02/2005 Customs (prev) was registered. He was produced before the XI Metropolitan Magistrate, Secunderabad and was granted bail on the date of production on furnishing the stipulated sureties. The petitioner was enlarged on bail.

According to the petitioner, on 13-07-2005 the respondent has impounded his passport and refused to return the same despite his request. In the circumstances, the writ petition is filed for an appropriate relief.

The respondent has filed a counter-affidavit stating, to the extent relevant, that the customs authorities have taken the petitioner's passport for facilitating further investigation pursuant to summons issued by the respondent-authorities under Section 67 of the Narcotic Drugs and Psychotropic Substances Act,1985 and Section 108 of the Customs Act,1962. The petitioner's passport is being held for the further investigation. The substance of the respondent's case is that as the investigation is in progress, they are entitled to impound and retain the passport of the petitioner.

The law relating to several aspects of the issue, variation, impounding and revocation of passports and other travelling documents is contained in the Passports Act,1967,(for short "The Act"), a federal legislation.Section 6 of the Act, *inter alia*, sets out the grounds on which a passport may be refused. Section 6(2)(f) of the Act enables refusal of a passport on the ground that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India or (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a Court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such Court. Section 10 of the Act empowers the Passport authority to vary or cancel the endorsement on a passport or travel document and sub-section 3 of Section 10 of the Act empowers the Passport

authority to impound or cause to be impounded or revoke, a passport or travel document, inter alia, if proceedings in respect of an offence alleged to have been committed by holder of passport or travel document are pending before a Criminal Court in India. Sub-section (h) of Section 10 of the Act enacts that if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest of the holder of the passport or travel document has been issued by a Court under any law for the time being in force, or if an order prohibiting the departure from India of the holder of the passport, or other travel document has been made by any such Court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made, a passport may be impounded.

From the provisions of the Act, it is apparent that it is the power of the Passport Authority to impound the passport issued infavour of a citizen. Sri A.Rajasekhara Reddy, the learned Assistant Solicitor General of India, has despite considerable effort been unable to place before this Court any legal provision that empowers the customs authority to *sui generis* impound the passport of a citizen. It does not appear that the respondent has made any effort to obtain an order of a Criminal Court of competent jurisdiction to restrain the petitioner from leaving the country or for impounding of his passport. The respondent has also not approached the Passport Officer for impounding the passport of the petitioner by setting forthwith a ground that the petitioner is required in the investigation of a Criminal case pending before the Criminal Court or other wise.

In the absence of any power and in the context of a specific power available to the Passport authority under Section 10 of the Act, the respondent does not appear to have any authority to impound the passport or withhold its release infavour of the petitioner.

On the above analysis, the respondent is directed to release the petitioner's passport expeditiously and in any event within a period of one (1) week from the date of receipt of a copy of this Order. The respondent is however at liberty to take appropriate steps in accordance with law.

The writ petition is accordingly allowed. No order as to costs.

GODA RAGHURAM,J

11TH AUGUST,2005

Note:

Issue CC in two days.

(B/O)

***TSNR**